

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

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NOTICE OF DECISION

File Copy

Case Name: **State of New Hampshire Department of Environmental Services v 725 Gold
Street Storage and Warehousing, LLC, et al**
Case Number: **218-2018-CV-00757**

Enclosed please find a copy of the court's order of October 25, 2019 relative to:

Consent Decree

October 28, 2019

Maureen F. O'Neil
Clerk of Court

(595)

C: 725 Gold Street Storage and Warehousing, LLC; Joseph Equipment Co., LLC; Joshua Connor
Harrison, ESQ

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Docket No. 218-2018-CV-00757

State of New Hampshire
Department of Environmental Services

v.

725 Gold Street Storage and Warehousing, LLC and
Joseph Equipment Co., LLC

CONSENT DECREE

NOW COME the Petitioner, the State of New Hampshire Department of Environmental Services (hereinafter the "Department"), by and through its attorneys, the Office of the Attorney General (collectively, the "State"), and the Respondents, 725 Gold Street Storage and Warehousing, LLC and Joseph Equipment Co., LLC (the "Respondents"), as well as Kingsbury Acquisition, LLC, Juliet Marine Realty, LLC, and ZJBV Properties, Inc. (the "KSN Corporations") (collectively with the Respondents, the "Corporate Parties") all represented by Brian Thibeault, the owner and manager of each corporation, and, hereby agree to the terms and conditions set forth in this Consent Decree ("Decree"), in full and complete settlement of the underground storage facility and underground storage tank ("UST") violations alleged by the State in its Petition for Injunctive Relief and Civil Penalties ("State's Petition" or "Petition") jointly filed with the Superior Court for Rockingham County with this Decree and other UST violations pertaining to properties owned by the KSN Corporations.

A. INTRODUCTION

1. This Decree resolves any and all violations of New Hampshire statutes and administrative rules for underground storage facility operation and management as alleged or could have been raised in the State's Petition; in particular, certain violations of the Underground Storage Facilities Act, RSA 146-C, and the administrative rules promulgated thereunder, related to the maintenance, inspection, testing, certification requirements, device installation, and monitoring requirements involved in respondents' UST facility ownership and operation. The State's Petition alleges, among other things, that respondents failed to undertake required operation and maintenance tasks required for the ownership and operation of a UST facility. This Decree also resolves any and all alleged UST violations not yet set forth in any petition at the following properties:

- a) 80 Laurel Street. Keene, New Hampshire 03431
Owner: Kingsbury Acquisition, LLC
Business Address: 300 Gay Street, Manchester, New Hampshire 03103
(The "Keene Site")
- b) 277 Portsmouth Avenue. Stratham, New Hampshire 03885
Owner: Juliet Marine Realty, LLC
Business Address: 300 Gay Street, Manchester, New Hampshire 03103
(The "Stratham Site")
- c) 158 Temple Street. Nashua, New Hampshire 03060
Owner: ZJBV Properties, Inc.
Business Address: 300 Gay Street, Manchester, New Hampshire 03103
(The "Nashua Site")

(The "KSN Properties").

2. The State's Petition seeks injunctive relief and civil penalties for the alleged violations of RSA 146-C and the administrative rules promulgated thereunder.

3. The Corporate Parties do not admit, and nothing in this agreement or the Corporate Parties' performance pursuant to it constitutes, or shall be construed as an admission of, any facts or legal allegations in the State's Petition or alleged violations at the KSN Properties.

4. The State has alleged twenty counts in its Petition. The Rockingham County Superior Court has granted summary judgment in favor of the State as to Counts I, XVII, and XVIII. There has been no trial on any issue of fact or law and no judicial determination with regard to the remaining counts in the Petition and the allegations related thereto or the KSN Properties. Instead, the parties, wishing to avoid the continued expense and delays of litigation, and in an effort to work cooperatively in resolving this matter, agree that settlement of this matter is in the public interest and that entry of this Decree without further litigation is an appropriate way to resolve the dispute, and the parties consent to the entry of this Decree as an Order of the Court.

5. Brian Thibeault represents that he has authority to legally bind 725 Gold Street Storage and Warehousing, LLC, Joseph Equipment Co., LLC, Kingsbury Acquisition, LLC, Juliet Marine Realty, LLC, and ZJBV Properties, Inc. to the terms of this Consent Decree. Kingsbury Acquisition, LLC, Juliet Marine Realty, LLC, and ZJBV Properties, Inc. agree to be parties to this Consent Decree and wish to resolve alleged UST compliance matters on their respective properties, as described in Section C, as part of this Consent Decree.¹

6. For purposes of this Decree and the underlying Petition, including any further action to enforce the terms of this Decree, the Corporate Parties waive any and all objections it may have to the Court's subject matter or personal jurisdiction.

¹ The Corporate Parties' involvement in this Decree does not relieve the Corporate Parties from compliance with underground storage facility statutes and rules and shall not constitute a waiver of the State's enforcement rights as to all unknown or undiscovered matters at 12 Delta Drive, Londonderry, New Hampshire or any of the KSN properties or any future matters which may arise at any of these properties.

NOW THEREFORE, it is ORDERED, ADJUDGED, and DECREED as follows:

B. CIVIL PENALTIES

7. In complete settlement and resolution of the claims brought by the State against the respondents in the Petition and the alleged violations to date at the KSN Properties, the Corporate Parties are assessed a civil penalty of one hundred and twenty thousand dollars (\$120,000).
8. Of the one hundred and twenty thousand dollar civil penalty, the Corporate Parties shall remit to the State sixty thousand dollars (\$60,000) as set forth below in paragraph 10.
9. Sixty thousand dollars (\$60,000) of the assessed civil penalty shall be suspended but shall become immediately due, jointly and severally, if:
 - a) Any of the Corporate Parties violates any provision of this Consent Decree, including, but not limited to, provisions regarding litigation support or the timely payment of civil penalties; or
 - b) Any of the Corporate Parties fails to timely achieve the actions described in Section C.
10. Payment of the civil penalty due under Paragraph 8 above, shall be made by company check payable to "Treasurer, State of New Hampshire" and shall be mailed or delivered to undersigned counsel for the State at 33 Capitol Street, Concord, New Hampshire 03301 in twelve (12) payments of five thousand dollars (\$5,000) a month, as follows:

| Payment Number | Payment Date (on or before) | Payment Amount |
|-----------------------|------------------------------------|-----------------------|
| Payment One (#1) | November 30, 2019 | \$5,000.00 |
| Payment Two (#2) | December 31, 2019 | \$5,000.00 |
| Payment Three (#3) | January 31, 2020 | \$5,000.00 |
| Payment Four (#4) | February 29, 2020 | \$5,000.00 |
| Payment Five (#5) | March 31, 2020 | \$5,000.00 |
| Payment Six (#6) | April 30, 2020 | \$5,000.00 |
| Payment Seven (#7) | May 31, 2020 | \$5,000.00 |
| Payment Eight (#8) | June 30, 2020 | \$5,000.00 |
| Payment Nine (#9) | July 31, 2020 | \$5,000.00 |
| Payment Ten (#10) | August 31, 2020 | \$5,000.00 |
| Payment Eleven (#11) | September 30, 2020 | \$5,000.00 |
| Payment Twelve (#12) | October 31, 2020 | \$5,000.00 |

11. Any late payments under this Consent Decree shall be assessed interest at an annual rate of 10%, compounded daily, from the date the payment is due until the date the payment is received by the State (RSA 336:1).

**C. PERMANENT REMOVAL OR COMPLIANCE AT UNDERGROUND STORAGE
FACILITY SITES**

12. The Corporate Parties shall undertake the following actions at each of the below sites, as described:

Londonderry Site

13. Corporate Parties shall permanently remove the three (3) 10,000 gallon USTs at 12 Delta Drive, Londonderry, New Hampshire 03053 within sixty days of the entry of this Decree.

Corporate Parties shall coordinate with adequate notice and cooperation with the Department prior to removal operations so that a Department representative is on-site during removal and shall submit to the Department all required documentation demonstrating proper removal of the site's USTs within a week after permanent removal.

Keene Site

14. Corporate Parties shall permanently remove the UST at the Keene Site within nine (9) months of execution of this Decree. The Corporate Parties shall coordinate with adequate notice and cooperation with the Department prior to removal operations so that a Department representative is on-site during removal and shall submit to the Department all required documentation demonstrating proper removal of the site's UST within a week after permanent removal.

Stratham Site

15. Corporate Parties shall bring the UST Facility at the Stratham Site into complete compliance with RSA 146-C and its administrative rules as an active UST Facility within thirty (30) days of execution of this Decree. Corporate Parties shall submit to the Department, for Department approval, all required documentation demonstrating such compliance.

Nashua Site

16. Corporate Parties shall permanently remove the UST at the Nashua Site within sixty (60) days of execution of this Decree. Corporate Parties shall coordinate with adequate notice and cooperation with the Department prior to removal operations so that a Department representative is on-site during removal and shall submit to the Department all required documentation demonstrating proper removal of the site's UST within a week after permanent removal.

D. OTHER TERMS AND CONDITIONS

17. This Consent Decree and all obligations assumed hereunder shall apply to and be binding upon the Corporate Parties and their successors and assigns. Actions or inactions of the Corporate Parties' agents, acting under or for the Corporate Parties, shall be considered actions or inactions of the Corporate Parties.

18. The State reserves any and all legal and equitable remedies, sanctions, and penalties that might be available to enforce the provisions of this Consent Decree against the Corporate Parties for failure to comply with the terms herein. The provisions of this Paragraph 18 shall survive beyond the termination of this Consent Decree.

19. If the civil penalty set forth in Paragraphs 7-11 of this Consent Decree is not paid in accordance with the schedule set forth therein, then, with respect to such penalty or penalties, this Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection statutes, court rules, and other applicable authorities.

20. The parties acknowledge that Corporate Parties' and their successors and assigns have a continuing obligation to remain in compliance with RSA chapter 146-C and all other applicable federal and State laws and rules. The State reserves the right to bring an administrative, civil, and/or criminal enforcement actions for any violation, including but not limited to the

Underground Storage Facilities Act (RSA 146-C) or the Oil Discharge or Spillage in Surface Water or Groundwater Act (RSA 146-A) and their respective administrative rules, arising or discovered after the effective date of this Decree. This reservation of rights includes, but is not limited to, violations that occur in connection with the terms of this Decree.

21. It is the intention of the parties that this Decree be entered and enforced as an Order of the Court, subject to all the power of the Court at law and equity. Upon entry of the order by the court, Corporate Parties acknowledge that any violation of the Decree or the agreements reflected herein may be cause for Corporate Parties being adjudged in contempt of court and Corporate Parties hereby waive any objections to jurisdiction or service of process if such remedy is sought by the State.

22. The State's failure to enforce any provision of this Decree after any breach or default shall not be deemed a waiver of its right to enforce each and all of the provisions of this Decree upon further breach or default.

23. This Decree contains the entire agreement of the parties, and any material modifications hereto must be agreed in writing signed by the Corporate Parties and the State, acting through the Office of the Attorney General, and approved by an order of the Court. The parties may agree in writing without Court approval of non-material modification, such as modification to schedules established by this Decree with no effect on statutory or regulatory obligations. Such non-material modifications become effective upon execution of the Corporate Parties and the State, or e-mail exchange evidencing agreement by the Corporate Parties and the State.

24. The effective date of this Decree shall be the date upon which it is entered as an Order of the Court.

25. This Decree shall be construed in accordance with the laws of New Hampshire.

26. Each party shall bear its own costs and attorneys' fees.

27. Upon approval and entry of this Consent Decree, the Consent Decree shall constitute a final judgment under State and federal law, and in any proceeding under Title 11 of the United States Code, the civil penalty set forth in paragraphs 7-11 shall constitute an allowed claim with the priority specified in 11 U.S.C. §726(a)(2).

E. TERMINATION OF THE DECREE

28. The Court shall retain jurisdiction to enforce the terms and conditions of this Decree and to resolve disputes arising hereunder, as may be necessary or appropriate for the construction, execution, or implementation of the Decree, and shall reopen the case upon motion by either party for enforcement of its terms. The Decree shall terminate after a determination by the State or the Court that the Corporate Parties have fulfilled all of its obligations under Sections B and C of this Decree.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE
OFFICE OF THE ATTORNEY GENERAL

Dated: October 23, 2019

By: 

Joshua C. Harrison (NH Bar #269564)
Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, New Hampshire
(603) 271-3679

Dated: October 18, 2019

By: 

Brian Thibeault, as Owner and Manager of:

725 GOLD STREET STORAGE AND
WAREHOUSING, LLC;
JOSEPH EQUIPMENT CO., LLC;
KINGSBURY ACQUISITION, LLC;
JULIET MARINE REALTY, LLC; AND
ZJBV PROPERTIES, INC.

The Court finds that this Decree is a reasonable and fair settlement and adequately protects the public interest in accordance with the Underground Storage Facilities Act, RSA Chapter 146-C.

Dated and entered this 25th day of October, 2019.

SO ORDERED

By: 

Presiding Justice of the Superior Court

Hon. Martin Hovisberg